IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No.258 of 2006

Decided on : May 21, 2007

Sakil Mohammad **…..Appellant.**

VERSUS

State of H.P. **…..Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : **Mr. Vijay Chaudhary, Advocate, vice Mr. Talok Chauhan, Advocate.**

For the Respondent : **Mr. Ashok Chaudhary, Additional Advocate General.**

Surjit Singh, Judge (Oral)

Appellant Sakil Mohammad has been convicted of offence under Section 20(B) of the Narcotic Drugs & Psychotropic Substances Act, 1985, for allegedly possessing 900 grams of *Charas*. He has been awarded sentence of seven years rigorous imprisonment and fine of rupees sixty thousand; in default of payment of fine to undergo rigorous imprisonment for a further period of one year.

2. I have heard the learned counsel for the appellant.

3. The only submission made by the learned counsel for the appellant is that the appellant was tried for the offence of possessing 900 grams *Charas*, but the Chemical Examiner's report shows that the *Charas* content in the stuff recovered from him was only 19.26 per cent, meaning thereby that the total quantity of *Charas* recovered from him was 173.34 grams. The submission made by the learned counsel is factually correct as per record.

Whether the reporters of the local papers may be allowed to see the Judgment?

4. This Court in Criminal Appeal No.491 of 2003 (Dharam Pal versus State of Himachal Pradesh), vide judgment dated 15.5.2007, in which the facts were similar to the facts of the present case, has held that where the stuff contains *Charas*, i.e. resin of cannabis plant, to certain extent per report of the Chemical Examiner and with respect to the rest of the stuff there is no report of the Chemical Examiner and the report further reads that the stuff contains resin to a certain extent and does not say that the whole of it is *Charas*, as in the present case, the quantity of *Charas*, recovered from an accused, has to be worked out based on the percentage of the resin (*Charas*) in the recovered stuff.

5. Applying the ratio of the aforesaid judgment of this Court to the facts of the present case, I hold that the quantity of *Charas* recovered from the appellant was only 173.34 grams or say lesser than the commercial quantity and, therefore, the sentence part of the judgment of the trial Court is liable to be modified.

6. Looking to the actual content of *Charas* in the stuff recovered from the appellant, I am of the view that the sentence imposed by the trial Court is disproportionate to the gravity of the offence. Accordingly, the sentence part of the judgment of the trial Court is modified and the appellant is sentenced to undergo rigorous imprisonment for a period of three years and a fine of Rs.10,000/-; and in default of payment of fine he shall undergo rigorous imprisonment for a period of three months.

7. Appeal stands disposed of accordingly.

May 21, 2007(sd) **(Surjit Singh), J.**